

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE: SKI TRAIN FIRE IN KAPRUN AUSTRIA ON NOVEMBER 11, 2000	:	X
	:	MDL # 1428 (SAS)
	:	
	X	
This document relates to the following cases:		
	X	
BLAIMAUER , et al,	Plaintiffs,	:
	:	
	:	
	X	
- and -	:	Civil Action #
	:	03-CV-8960 (SAS)
OMNIGLOW CORPORATION, et al	Defendants.	:
	X	
	X	
	X	
GEIER , et al, - and -	Plaintiffs,	:
	:	
	:	
	X	
OMNIGLOW CORPORATION, et al	Defendants.	:
	X	
	X	
	X	
MITSUMOTO, et al, - and -	Plaintiffs,	:
	:	
	:	
	X	
REPUBLIC OF AUSTRIA, et al	Defendants.	:
	X	
	X	
	X	
MITSUMOTO, et al, - and -	Plaintiffs,	:
	:	
	:	
	X	
ROBERT BOSCH CORP., et al	Defendants.	:
	X	
	X	
	X	
STADMAN, et al, - and -	Plaintiffs,	:
	:	
	:	
	X	
AUSTRIAN NATIONAL TOURIST OFFICE, et al,	Defendants.	:
	X	
	X	
	X	
FERK, et al, - and -	Plaintiffs,	:
	:	
	:	
	X	
OMNIGLOW CORPORATION, et al,	Defendants.	:
	X	
	X	
	X	

**DECLARATION & AUTHORITIES IN SUPPORT OF MOTION TO AMEND
PRIOR MOTIONS TO INCLUDE RELIEF PURSUANT TO FRCP 59**

I, Edward D. Fagan, hereby declare and say:

1. I am Plaintiffs' counsel and submit this Declaration in support of Plaintiffs' Motion to formally Amend the below listed Motions for Relief pursuant to Local Rule 6.3 and FRCP 60 (b) to include relief pursuant to FRCP 59 (e).
2. The Motion is made for the purpose of clarifying the record as it relates to the relief sought based upon the June 19, 2007 Opinion and Order¹.
3. On July 9, 2007, a "Clerk's Entry of Judgment" was filed in each of the above cases based upon the Court's Opinion and Order, dated June 19, 2007 which was entered on June 20, 2007.
4. Prior to the Clerk's Entry of Judgment Plaintiffs' filed their requests for an extension of time (*which delineated the good faith reasons why the basis for relief*) to move for relief pursuant to Local Rule 6.3 and FRCP 60 (b) in relation to the June 19, 2007 Opinion and Order.
5. At a Conference on July 11, 2007, Plaintiffs Counsel explained that the Clerk's Entry of Judgment had been entered after Plaintiffs had already filed their Motion for Extension of time to move for relief from the June 19, 2007 Opinion and Order.
6. The Court confirmed that Plaintiffs' request for an extension of time to move for relief was timely and after hearing the Plaintiffs' good faith basis for making the Motion set a briefing schedule on the Motion.
7. Plaintiffs have already filed their Motions for Reconsideration and other relief and Defendants have until September 17, 2007 within which to file their Response.

¹ This Motion does not affect the other relief sought by Plaintiffs including but not limited to the relief sought in the recently filed August 20, 2007 Motion for Stay, Recusal and Other Relief.

8. There is no prejudice to Defendants by the granting of this Motion.
9. FRCP Rule 15 (c) and (d) provide that upon notice and motion to the Court, a party is permitted to amend a previously filed pleading relating which then would relate back to the original pleading.
10. With this Declaration, Plaintiffs are submitting the Docket Sheets from the instant cases showing the original pleadings for relief from the June 19, 2007 Opinion and Order:
 - a. Exhibit 1 – Docket Sheet from 1:01-md-1428 (SAS)
 - i. Motion for Extension of Time – Doc. #s 304, 305 & 309, and
 - ii. Motion for Relief from June 19, 2007 Opinion and Order and Clerk’s Judgment – Doc. #s 313 & 315;
 - b. Exhibit 2 – Docket Sheet from 1:03-cv-8960 (SAS)
 - i. Motion for Extension of Time – Doc. # 166, and
 - ii. Memorandum in Support of Motion for Relief from June 19, 2007 Opinion and Order – Doc. # 169;
 - c. Exhibit 3 – Docket Sheet from 1:03-cv-8961 (SAS)
 - i. Motion for Extension of Time – Doc. # 67, and
 - ii. Memorandum in Support of Motion for Relief from June 19, 2007 Opinion and Order – Doc. # “Unnumbered”, filed July 31, 2007;
 - d. Exhibit 4 – Docket Sheet from 1:06-cv-2811 (SAS)
 - i. Motion for Extension of Time – Doc. # 56, and
 - ii. Memorandum in Support of Motion for Relief from June 19, 2007 Opinion and Order – Doc. #s “Unnumbered”, filed July 31, 2007;

e. Exhibit 5 – Docket Sheet from 1:07-cv-935 (SAS)

- i. Motion for Extension of Time – Doc. # 49, and
- ii. Motion for Relief from June 19, 2007 Opinion and Order and Clerk's Judgment – Doc. # 51 and "Unnumbered", filed July 31, 2007, Memorandum in Support of Relief from June 19, 2007 Opinion and Order;

f. Exhibit 6 – Docket Sheet from 1:07-cv-3881 (SAS)

- i. Motion for Extension of Time – Doc. #s 13 & 14,
- ii. Memorandum in Support of Motion for Relief from June 19, 2007 Opinion and Order – Doc. # "Unnumbered", filed July 31, 2007.

11. The facts and statements contained above are true and accurate to the best of my knowledge information and belief.

Dated: 22 August 2007

electronically signed signature page to be filed separately
Edward D. Fagan